IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1909 OF 2003

Shri Sakharam Parsharam Ghaste
Indian Inhabitant, Hindu, aged 63 years,
Residing at 601, Villa Flaviana Road No.86
Dadar (W), Bombay-400 028. ...Petitioner

Vs.

1. The Municipal Corpn. Brihanmumbai
A Body constituted under B.M.C. Act, 1888
as amended having its office at Mahapalika
Building, Mahapalika Marg, Fort, Mumbai-400 001.

2. Municipal Commissioner
Municipal Corporation of
Brihan Mumbai, Mahapalika Building
Fort, Mumbai-400 001. ...Respondents

The Petitioner is in person
Mr. P.M.Palshikar with Ms. Puranik Advocates
for the Respondents

CORAM: SMT. ROSHAN DALVI, J.
DATED: 16TH JUNE, 2006

ORAL JUDGMENT (PER SMT. ROSHAN DALVI, J)

1. The Petitioner is an employee of the Municipal Corporation of Brihanmumbai (BMC). He was appointed to

the BMC in 1983. He was transferred to Malad office of the BMC in 1990. For certain work orders issued by him without following proper procedure and without the sanction of the competent authority, the BMC, Zone IV, during January, 1991 to November, 1991 he was issued a memo on 6th December, 1991 by the BMC, Zone IV. He replied that memo on 19th December, 1991. He was transferred to the Bhandup office of the DMC in 1992. On 18th August, 1993 an order directing a departmental inquiry against the Petitioner was passed by the Municipal Commissioner. The Petitioner retired on superannuation on 31st July, 1998.

2. The Petitioner has essentially challenged the proceedings in the departmental inquiry and the orders passed therein dated 27th September, 2002 and 6th March, 2003 as having been passed perversely, maliciously and without authority of law. The Petitioner has accordingly preferred this writ petition for quashing the inquiry proceedings, the charge sheet dated 4th August, 1997 therein, the show cause notice dated 5th October, 1999 issued there upon and the aforesaid orders.

3. As a result of the orders in the inquiry the punishment imposed upon the Petitioner is reduction of his pension to the extent of Rs.1000/- permanently. The Petitioner has

accordingly pressed for a writ of mandamus to be restored the full pension.

4. The Petition having been drafted by the Petitioner in person is detailed and verbose. The Petitioner has challenged in minute details of various acts of the inquiry officer as well as the orders of the disciplinary authority and the appellate authority.

5. It would be appropriate to initially deal with the main contention of the Respondents pursuant to which the inquiry proceeded and which is made out to be the main charge against the Petitioner.

6. The Petitioner served as Ward Officer in the BMC at the relevant time. The duties of the Ward Officer interalia include to check the work carried out by petty works contractors or by the department and to ensure that all such work, for which budgetary provision is made, is carried out under the sanction of the authority.

7. The main charge against the petitioner is that he carried out various petty works exceeding Rs.10,000/- which required to be sanctioned by the competent authority, being the DMC, Zone IV, without his sanction and in certain cases

even without the budgetary provision being made.

8. The parties argued at length about the working of the BMC, the petitioner's role and duties therein, the kind of petty contracts required to be given by the BMC to the contractors and how those contracts were supervised and got paid by the petitioner. That has been the crux of the departmental inquiry against the petitioner too. The charge against the petitioner is that except in case of 14 out of 184 work orders being issued by the petitioner the regular procedure was not followed. As many as 170 work orders were got issued by the petitioner to the PWC contractors (petty work contractors) without the sanction of the competent authority, without certification of funds and budgetary provision and for which the petitioner applied for and obtained post-facto sanction from the competent authority being the relevant DMC, Zone IV.

9. It is indeed astounding to note that, if the petitioner was subordinate to the DMC, Zone IV and required to obtain his sanction, he could get away with work being done without such sanction admittedly in as many as 170 instances. The relevant competent authority issuing post-facto sanction has himself made this complaint against the petitioner. It is contented on behalf of the respondents that because private

contractors were to be paid for the work done by them upon the instructions of the petitioner, the relevant DMC, Zone IV was embarrassed and constrained to issue post-facto sanction. This has been repeated 170 times as per the respondents' own charge.

10. The function of respondent no.1 in issuing such work contracts through its ward officers must first be understood. The respondents have produced, as per the Court's query, a few case papers. Upon going through the case papers, as has been done in the inquiry also, it is seen that an estimate of the cost has been prepared by the accounts department. A submission with regard to the justification of the work has been made by the Ward Officer. It is counter signed by the DMC, Zone IV and detailed account of the work done is prepared upon the execution of the contract and passed by the accounts department of the first respondent. A letter of the contractor is addressed to the Assistant Engineer Maintenance (AE (M)) for releasing payment upon the completion of the work. The delay, if any, of the specified number of days in execution of the work is shown and thereafter the papers are put up by the petitioner before the relevant DMC.

11. Such exercise is carried out for petty works such as

storm water drain (SWD), providing sintex tanks for construction of washing place and water connection in a slum.

12. The case papers show the Petitioner having applied for post-facto sanction from DMC- Zone IV. The sanction is applied on a cyclostyled paper of the first respondent. The provision for application for post-facto sanction on papers so cyclostyled is in 2 formats. This clearly shows that such post-facto sanction can be obtained in various cases by various ward officers from the respective DMCs of those zones in the normal course. The reverse of one such request of post-facto sanction shows that the relevant DMC-Zone IV has issued sanction, post-facto in 101 cases. Such an endorsement is under the signature of the relevant DMC-Zone IV dated 26th September, 2002. The case papers further show the relevant budgetary provision being made and the account passed by the accounts department of the first respondent.

13. The documents produced by the first respondent also show letters issued by the petitioner to the various contractors directing them to carry out the work mentioned therein in anticipation of the work order, which was assured to be issued in due course of time. The respondents have

produced as many as 13 such letters of 1991 issued by the petitioner. However, the petitioner is charged with having got post-facto sanction as many as 170 times.

14. It may be mentioned straight way that the entire detailed inquiry and the report made thereunder is necessarily with regard to the aforesaid charge. Under the inquiry 21 statements are recorded and 9 documents are relied upon. The petitioner has been served with these papers and has taken part in detailed inquiry where he has extensively cross examined the witnesses.

15. It is however, his contention that this practice has been followed in all the wards for work of urgent nature which are got done under the supervision of the ward officer and for which the DMCs accord post-facto sanctions. The fact that post-facto sanction has been accorded admittedly as many as 170 times echoes that contention. Besides it is the petitioner's case that the work orders are issued not under Officer's signature but under the Assistant Engineer (Maintenance)'s (AE(M)) signature. It is further his case that these work orders are seen, scrutinised and passed by the accounts department.

16. It is admitted by the respondents that they are issued

by the AE (M) and that post-facto sanction has been granted by the DMC, Zone IV. The fact that the budgetary provision has been made and any amounts are passed in most of the cases is also admitted.

17. It is therefore inconceivable to conclude that only the ward officer is at fault. Even if he is at fault, his lapse could have been easily corrected by the authority specifically required to grant its sanction by refusal to grant the sanction at all. That has not been done. The inquiry has proceeded for the acts done in 1991 (for which the memo was issued in December, 1992) since August, 1993. It is continued after the superannuation of the petitioner. The petitioner has accordingly been in the maze of the inquiry for the last 1½ decades. The AE (M) who signed the work orders and the DMC, Zone IV who, however reluctantly, gave his post-facto sanction have not only being penalised but the latter has himself made a complaint and initiated the inquiry process itself.

18. It is wonderous how an authority sanctioning an order, as many as 170 times admittedly, can himself point a finger at his own sanctioned orders. This is in the face of he himself having a weapon to wield to set right any errant behavior of his subordinate officer at the threshold.

19. The other charge against the petitioner is that he issued as many as 9 work orders to the contractor one M/s. G.H.Hirani in the last week of his contract period which ended on 9th April, 1991. 13 letters that the respondents have produced in a file are essentially of that period. Several of these letters are issued to carry out work between 4th April, 1991 and 8th April, 1991, including a day before the end of the contract period of that contractor. Strangely even if that was a mischief and malafide function, the stamp of approval has been put upon it by the Senior Municipal Officer who could have, in his honest discretion, refused to grant the post-facto sanction which was requested.

20. It is the contention of the petitioner that he was not informed of the expiry of the contract period of the said contractor and did not know that another contractor was appointed from 10th April, 1991. It is contended by him that

his ward office did not receive the intimation about the appointment of the new contractor immediately upon his appointment. The letters produced by the respondents show letters issued by the petitioner as the ward officer even after the later contractor M/s. P.D. Shah was appointed. No intimation sent to the ward office about the appointment of

the new contractor has been relied upon the respondent either the inquiry or produced before this Court.

21. It is further the contention of the petitioner that he had acted as per the oral instructions of the DMC-Zone IV as well as the AMC (B) for having work orders issued for getting work done expeditiously without waiting for his sanction in urgent cases. He contends that in an inquiry against another BMC employee for the same ward for similar issue of work orders the inquiry officer came to a finding that such oral instructions were issued by the DMC. Though the DMC who has filed his statement and deposed before the inquiry officer denied that allegation, the AMC has not been examined. The relationship between the petitioner and the relevant DMC-Zone IV, who complained against him despite his own post facto sanctions, has been unduly strained and hence a mere denial of the respondents to the petitioner's case in the inquiry does not go far.

22. The respondents have further contended that the post-facto sanctions which were also applied for by the petitioner were so done after an inordinate delay of between 2 months to one year in certain cases. Nevertheless despite such delay the sanction was granted.

23. They have further contended that several case papers

were put up for sanction before the relevant DMC-Zone IV and sanctions were obtained by some latent misrepresentation and/or suppression. It hardly behoves a supervisory authority to put his pen to paper by way of post-facto sanction without understanding the concept and depth of the order sanctioned by him.

24. This is the crux of the inquiry against the petitioner which has spanned 1½ decades. Though it is a matter of common consensus that the very fibre of our society has been rotted by the evil of corruption and though such instances would themselves speak of the malaise that has afflicted our society, it hardly lies in the hands of some of the officers to saddle the blame and the responsibility of such malfeasance upon the shoulders of only one or some of them and this in the face of the system of checks and balances set out in the administration of the Corporation itself. If an officer such as the petitioner is to behave errantly for his own wrongful gratification and grant work orders to any contractors without following the prescribed procedure to which he should be amenable, the entire management is placed in the hands of the supervisory officer to check his nefarious activities by refusing to sanction the payment post-facto. In fact the entire alleged behavior could have been set right by none other than the relevant DMC-Zone IV by his

mere refusal to accord sanction upon the repeated acts of the petitioner. This he failed to do. He granted post-facto sanction an astonishing 170 times. He therefore put his stamp of approval upon, what he himself complained as erroneous activity on the mere ground of constraint to pay the contractors for the work done, ignoring the fact that those contractors are themselves party to such errant activities. The petitioner's contention that, that was done in the normal course in all ward offices as his, is borne out by the cyclostyled letters for grant of post-facto sanction produced by the respondents themselves. Further the work orders were not signed by the petitioner. They were signed by the AE (M). They were put under petitioner's check who was himself under the direct supervision of the DMC-Zone IV.

25. What is further evident from the papers of the detailed inquiry, the orders of which are challenged in this petition, is that a small fly like the petitioner is caught in the dragnet of the Corporation, (the petitioner being able to grant work orders admittedly to "Petty" contractors for civil engineering work) disregarding the large sharks that break free from the dragnet in various other departments and works of the Corporation.

26. Another facet of this entire exercise is that at the level of the Petitioner, a disproportionately detailed inquiry, entailing a large amount of public time and funds and the consequent judicial time, is held when all that was needed was the refusal of post facto sanction ! One comes across no such action taken in case of any higher official for any of the larger BMC contracts. Even in the instant case a similar punishment is not meted out to the other officers in the ward concerned with the same contracts.

27. The impugned orders in the inquiry passed against the petitioner for the acts charged against him are, therefore, seen to be perverse and made only with a view to harass the petitioner alone. Such orders therefore, cannot stand the test of justness. The charge against the petitioner cannot be seen to be made out in view of the sanction by the DMC himself. The facing of the injury of this dimension alone is itself punishment for the petitioner. The punishment awarded against the petitioner is wholly disproportionate to the acts for which he is charged. Such punishment cannot, therefore, stand.

28. The Petitioner relied upon the case of V.S. Jadhav Vs. Municipal Corporation of Greater Bombay 2005(2) MLJ 1039 in support of his contention that the disciplinary authority

cannot, by way of imposition of punishment and penalty, permanently withdraw his pensionery benefits. In para 11 of that judgment Section 80(A) and 80(B) of the Bombay Municipal Corporation Act, 1988 has been considered. The Sections lay down the power of appointment of Municipal Officers and the manner of making the appointment. The power of appointment vests in the Corporation. On a plain reading of Section 80(A) (1), delegation of that power is made to the standing committee of the Municipal Corporation. That is therefore, the authority having the power of appointment. Certain powers delegated to the Municipal Commissioner under a circular of the MMC were considered in that case. It was held that there was no power to sanction initiation of disciplinary proceedings and withholding or withdrawal of pension delegated to the Municipal Commissioner under the circular considered in that case. The respondents have relied upon a circular dated 16th January 1992 showing the delegation of powers to the Municipal Commissioner. No specific delegation precisely for withdrawal of pensionary benefits is shown to be made in favour of the Municipal Commissioner. Consequently, as also held in that case, that power technically does not exists in favour of the Municipal Commissioner. In this case the impugned order has been passed by an Additional Municipal Commissioner (P) in whose favour also no

delegation of power is shown.

29. The Petitioner has relied upon the judgment in the case of Prabhakar Shrirang Jagdale Vs. Kalyan-Dombivli Municipal Corporation 2003(4) All MR 46, in which it has been held that only the competent authority can impose penalties specified in Section 56(2) of the Bombay Provincial Municipal Corporation Act. The Corporation is the competent authority under Section 56 thereof. Hence, only the Corporation can impose the penalties specified therein. The Corporation can initiate proceedings or authorise any officer or any authority to inquire into allegations against its officer. The Commissioner, who was shown not authorised to issue the charge-sheet, held the inquiry or imposed penalty was held not to have any power to do so. The argument in that case that only as the administrative head the Commissioner could issue the charge-sheet and held the inquiry was negative. Since in this case also no specific allegation of power in favour of the Additional Municipal Commissioner (P) is shown, the order suffers from the same defect.

30. The petitioner has contended that the impugned orders are not speaking orders and hence cannot be sustained. The petitioner's contention with regard to the

order dated 27th September 2002 of the AMC (P) is incorrect. The order refers to charges against the petitioner and how they can be sustained. It is a detailed speaking order. In the case of National Fertilizers Ltd. & Ors. Vs. P.K. Khanna , 2005 7 SCC 597, it has been held that the disciplinary authority is required to give reasons only when it disagrees with finding of the inquiry officer and not when it concurs with that finding. Consequently the order cannot be held unsustainable on that technical ground.

31. The appellate authority has confirmed the earlier punishment and penalty. The same reasoning and analogy could apply to that order also.

32. The petitioner further contends that rules of natural justice was not followed. Though scanning thorough the papers of the inquiry no such conclusion can be arrived at, the petitioner has not shown actual suffering of prejudice by virtue of the principles of natural justice allegedly not being followed. In the case of Divisional, Manager, Plantation Division, Andaman & Nicobar Islands Vs. Munnu Barrick , 2005 (2) SCC 237 at page 243 it has been held, following the case of Bar Council of India Vs. High Court of Kerala 2004 6 SCC 311, that the Court would insist upon proof of prejudice before setting aside the order impugned before it on the

ground of non-compliance with principles of natural justice. It is observed that upon a technical plea of non-supplying of a copy of the report, the order cannot be vitiated; the delinquent employee must show sufferance of prejudice thereby.

33. This rule was enunciated also in the case of Tripathi K.L. Vs. State Bank of India & Ors. Reported in 1984(1) LLJ SC 2. In that case a complaint was made that the principles of natural justice were violated on the ground of absence of opportunity of cross examination following the observations of Hidayatullah C.J. In the case of Jankinath Sarangi Vs. State of Orissa, 1970-I L.L.J. 356 , that the basic principles of natural justice is that there should be fair play in action and that the decision must be arrived at in a just and objective manner. The rules of natural justice are flexible and cannot be put in any rigid formula. To sustain complaint of violation of principles of natural justice on the ground of absence of authority to cross examine, prejudice has to be established in the procedure followed. In those cases there was no real prejudice because of the infringement of any particular rule of natural justice. It was observed in para 39 of that judgment that though reasons have not been expressly stated, they were implicit therein as can appear from a fair reading of the order impugned in that

case. It was observed that there was consideration of the facts of the case and the decision arrived at after consideration of those facts. Such is the present case also.

34. In fact it has been held in the case of State of Haryana Vs. Rattan Singh reported in 1982 (1) L.L.J. 46 that strict and sophisticated rules of evidence do not apply in domestic inquiries. Hence, the technical pleas taken by the petitioner are to no avail.

35. When a detailed inquiry is held and the delinquent has cross examined all witnesses, it is not open to him to challenge the proceedings on any technical ground. Merits of such cases are writ large on their record. They alone need be considered. Even if it is the petitioner's case that a particular aspect is left unconsidered, the hearing given by the Court on merits itself ensures the right of natural justice.

36. In view of the consideration of the merits of the petitioner's case, yet other technical grievances made by him need not be adverted to.

37. Under the circumstances the Petition succeeds. The order of the AMC (P) dated 27th September, 2002 and the order of the AMC (ES.) and AMC (W.S.) dated 6th March, 2002 are set aside. The petitioner shall be given the arrears

of the pension so far deducted within four months. The petitioner shall be paid his full pension henceforth. There shall be no order as to costs.

38. The original documents produced by the Respondents are returned to their Advocate.

(SMT. ROSHAN DALVI, J.)